

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

Andreea Melissa Olteanu,

Case No. 2:23-cv-02006-RFB-DJA

Plaintiff,

Order

V.

Louis Schneider, et al.,

Defendants.

Under 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested authority to proceed *in forma pauperis*. (ECF No. 1). Plaintiff also submitted a complaint. (ECF Nos. 1-1 and 3). Because the Court finds that Plaintiff's application is complete, it grants her application to proceed *in forma pauperis*. The Court also screens Plaintiff's complaint.

I. *In forma pauperis* application.

Plaintiff filed the affidavit required by § 1915(a). (ECF No. 1). Plaintiff has shown an inability to prepay fees and costs or give security for them. Specifically, Plaintiff asserts that her expenses exceed her income, that her home is in foreclosure, and that she is disabled. Accordingly, the request to proceed *in forma pauperis* will be granted under 28 U.S.C. § 1915(a). The Court will now review Plaintiff's complaint.

II. Screening the complaint.

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the

1 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
 2 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
 4 complaint for failure to state a claim upon which relief can be granted. Review under Rule
 5 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d
 6 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of
 7 the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp.*
 8 *v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual
 9 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
 10 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*citing Papasan v.*
 11 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations
 12 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,
 13 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory
 14 allegations, do not suffice. *Id.* at 678. Where the claims in the complaint have not crossed the
 15 line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
 16 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings
 17 drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
 18 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

19 Federal courts are courts of limited jurisdiction and possess only that power authorized by
 20 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.
 21 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
 22 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
 23 federal law creates the cause of action or where the vindication of a right under state law
 24 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
 25 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the
 26 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a
 27 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”
 28 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under 28 U.S.C. § 1332(a), federal

1 district courts have original jurisdiction over civil actions in diversity cases “where the matter in
2 controversy exceeds the sum or value of \$75,000” and where the matter is between “citizens of
3 different states.” Generally speaking, diversity jurisdiction exists only where there is “complete
4 diversity” among the parties; each of the plaintiffs must be a citizen of a different state than each
5 of the defendants. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

6 **A. Plaintiff's allegations.**

7 Plaintiff has filed two complaints, the one attached to her application to proceed *in forma*
8 *pauperis* and a second complaint. (ECF Nos. 1-1, 3). Because amended complaints supersede
9 any prior complaints, the Court will only consider Plaintiff's second complaint. That second
10 complaint appears to be based on the same underlying facts as the original, but adds defendants.

11 Plaintiff sues seventeen Defendants:

- 12 (1) Louis Schneider, Esq.;
- 13 (2) Christopher Ford, employed with the Law Firm of Ford and Friedman, LLC;
- 14 (3) Anthony Smith, employed with the Law Firm of Ford and Friedman, LLC;
- 15 (4) Clark County Coroner;
- 16 (5) the Henderson Police Department (“HPD”);
- 17 (6) J. Diaz, an HPD officer;
- 18 (7) B. Eric, an HPD officer;
- 19 (8) S. Ulibarri, an HPD officer;
- 20 (9) Engine 95 of the HPD;
- 21 (10) Rescue 84 of the HPD;
- 22 (11) Sgt. Ramos, an HPD sergeant;
- 23 (12) M. Condratovich, an HPD officer;
- 24 (13) A Nelson, an HPD officer;
- 25 (14) N Calvano, an HPD officer;
- 26 (15) J Self, a “CSA” detective;
- 27 (16) P Farrel, an HPD officer; and

28

1 (17) P. Chavez.¹

2 (ECF No. 3 at 1-2).

3 Plaintiff lists the following claims in the caption of her complaint:

- 4 (1) RICO wrongful death;
- 5 (2) RICO violation of section 1983 rights;
- 6 (3) RICO grand larceny;
- 7 (4) RICO fraud;
- 8 (5) RICO embezzlement;
- 9 (6) RICO reckless endangerment;
- 10 (7) RICO obstruction of justice;
- 11 (8) Malicious prosecution;
- 12 (9) RICO wire fraud;
- 13 (10) RICO mail fraud; and
- 14 (11) Legal malpractice.

15 (*Id.* at 1).

16 Plaintiff's complaint also appears to allege the following claims:

- 17 (1) Illegal search and seizure in violation of the Fourth Amendment;
- 18 (2) Unlawful arrest in violation of the Fourth Amendment.²

19 Plaintiff alleges that the HPD, Schneider, Ford, and the Clark County Coroner schemed to
20 murder Plaintiff's husband on December 17, 2022 and frame Plaintiff for the murder so that they
21 could sell her property at auction. (*Id.* at 1-17). Plaintiff asserts that her husband was murdered
22 by a hammer, but the HPD improperly documented evidence of the murder and failed to perform
23 certain forensic tests on the evidence, while the Coroner wrongfully reported that her husband

25 _____
26 ¹ Plaintiff lists a badge number for this Defendant and the note "corner." It appears Plaintiff may
27 be alleging that this individual works for the Clark County Coroner.

28 ² Plaintiff also mentions "financial damage" in violation of the Eighth Amendment and illegal
search and seizure in violation of the First Amendment in her complaint. But these claims are not
cognizable under the Constitutional Amendments Plaintiff references.

1 died of cardiomyopathy. (*Id.* at 2-3). Plaintiff asserts that, when responding to the murder, the
 2 HPD also took the opportunity to search her home for items unrelated to the murder and seize
 3 those items. (*Id.* at 7). Plaintiff alleges that HPD turned these items over to the Clark County
 4 Public Administrator, which kept an inventory of them. (*Id.* at 7-8).³ Plaintiff alleges that the
 5 Clark County Public Administrator later auctioned off her property. (*Id.* at 7-8, 12). Plaintiff also
 6 asserts that, the auction was arranged so that when she turned up to reclaim her property, she
 7 would be arrested, presumably under two fabricated bench warrants. (*Id.* at 8-9).

8 Plaintiff asserts that Schnieder and Ford were involved in the scheme because they helped
 9 the HPD prepare a file by providing documents and information from Plaintiff's and her
 10 husband's family court case in which Schneider represented Plaintiff. (*Id.* at 9-10). Plaintiff
 11 alleges that Schneider eventually withdrew his representation of her after she would not agree to
 12 let his private investigator frame her husband for a DUI. (*Id.*). The day after he withdrew his
 13 representation, Plaintiff alleges that a bench warrant issued for her arrest on a fabricated
 14 misdemeanor charge. (*Id.*). Plaintiff also alleges that on prior occasions, Ford and Schneider
 15 "illegally attempted to sell [her] property." (*Id.* at 10-11). Plaintiff adds that Ford and Schneider
 16 have "colluded with real estate agents in blocking [her] property from being rented..." (*Id.* at
 17 13). Plaintiff claims that she has obtained evidence that her husband was murdered but that the
 18 HPD will not update the death report with that evidence. (*Id.* at 14).

19 1. Racketeer Influenced and Corrupt Organizations ("RICO") Act.⁴

20 To state a civil RICO claim under 18 U.S.C. § 1964(c), a plaintiff must allege
 21 "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as

23 ³ After the murder, Plaintiff asserts that her home was burglarized and vandalized, presumably
 24 because the HPD did not secure it. (ECF No. 1-1 at 8). But it is unclear if Plaintiff is alleging a
 cause of action, like negligence, related to this fact.

25 ⁴ Plaintiff alleges nine "RICO" causes of action. These appear to be Plaintiff's assertions of the
 26 predicate acts underlying her RICO claim. However, only plaintiff's claims for "RICO wrongful
 27 death," and "RICO obstruction of justice" are cognizable as predicate acts as alleged. See 18
 U.S.C. § 1961(1)(A) (listing an act involving murder as a predicate act); see 18 U.S.C.
 § 1961(1)(B) (listing 18 U.S.C. § 1510—obstruction of criminal investigations—and 18 U.S.C.
 § 1511—obstruction of state or local law enforcement—as predicate acts).

1 ‘predicate acts’) (5) causing injury to the plaintiff’s ‘business or property.’” *Abcarian v. Levine*,
 2 972 F.3d 1019, 1027 (9th Cir. 2020). Under the statute, an “‘enterprise’ includes any individual,
 3 partnership, corporation, association, or other legal entity, and any union or group of individuals
 4 associated in fact although not a legal entity.” 18 U.S.C. § 1961(4). The offenses constituting
 5 “racketeering activity” are contained in 18 U.S.C. § 1961(1). “In order to constitute a ‘pattern,’
 6 there must be at least two acts of racketeering activity within ten years of one another.” *Turner v.*
 7 *Cook*, 362 F.3d 1219, 1229 (9th Cir. 2004) (citing 18 U.S.C. § 1961(5)).

8 “The RICO statute provides a cause of action to any person ‘injured in his business or
 9 property by reason of’ a violation of the statute.” *Harmoni Int’l Spice, Inc. v. Hume*, 914 F.3d
 10 648, 651 (9th Cir. 2019) (quoting 18 U.S.C. § 1964(c)). To have standing to bring a civil RICO
 11 claim, a plaintiff must “show that the racketeering activity was both a but-for cause and a
 12 proximate cause of his injury.” *Rezner v. Bayerische Hypo-Und Vereinsbank AG*, 630 F.3d 866,
 13

14 Plaintiff’s claims for “RICO violation of Section 1983 rights,” “RICO grand larceny,” “RICO
 15 fraud,” “RICO embezzlement,” “RICO reckless endangerment,” “RICO wire fraud,” and “RICO
 16 mail fraud,” all fail as outlined below.

17 42 U.S.C. § 1983 is not a source of substantive rights, but rather a method of vindicating federal
 18 rights elsewhere conferred. *See Graham v. Connor*, 490 U.S. 386, 393-94 (1989). Similarly,
 19 reckless endangerment is commonly understood as a factor in enhancing criminal sentences. *See*
 20 *U.S. v. Young*, 33 F.3d 31, 32 (9th Cir. 1994).

21 Grand larceny and embezzlement describe federal crimes arising under 18 U.S.C. § 641, but
 22 neither are listed as “racketeering activity” under 18 U.S.C. § 1961. *See Murphy v. JP Morgan*
Chase, No. 2:15-cv-0725-KJM-GG-PS, 2015 WL 2235882, at *2, 4 (E.D. Cal. May 11, 2015)
 23 (explaining that grand larceny arises under 18 U.S.C. § 641); *see Retanan v. California Dept. of*
Correction and Rehabilitation, No. 1:11-cv-01629-GBC-PC, 2012 WL 1833888, at *5 (D. Nev.
 24 May 18, 2012) (explaining that embezzlement arises under 18 U.S.C. § 641).

25 Plaintiff alleges no facts related to wire communications or mail communications such that her
 26 allegations could support claims for wire or mail fraud as predicate acts underlying her RICO
 27 claim. *See* 18 U.S.C. § 1341 (mail fraud); *see* 18 U.S.C. § 1343 (wire fraud).

28 Plaintiff also alleges no facts that would support a cause of action for fraud. *See Nevada Power*
Co. v. Monsanto Co., 891 F.Supp. 1406, 1413 (D. Nev. 1995) (explaining that under Nevada law,
 29 the elements of fraud are a false representation by the defendant, defendant’s knowledge that the
 30 representation was false, defendant’s intention to induce the plaintiff to act or refrain from acting
 31 in reliance on the misrepresentation, plaintiff’s justifiable reliance on the misrepresentation, and
 32 damage to the plaintiff resulting from the reliance). And “fraud” in general is not listed as a
 33 predicate act under 18 U.S.C. § 1961(1).

1 873 (9th Cir. 2010). “Proximate causation for RICO purposes requires ‘some direct relation
 2 between the injury asserted and the injurious conduct alleged.’” *Id.* (quoting *Holmes v. Sec.
 3 Investor Prot. Corp.*, 503 U.S. 258, 268 (1992)). However, while RICO liability may extend to a
 4 suit against municipal officers sued in their personal capacities, municipal *entities* are not subject
 5 to liability under RICO. *Abcarian*, 972 F.3d at 1027.

6 Here, Plaintiff brings her RICO claim against the HPD, the Coroner, Schneider, and Ford.
 7 Plaintiff’s RICO claims against HPD and the Coroner fail because both are municipal entities.
 8 And Plaintiff does not specify if she sues any HPD officers or Clark County Coroner employees
 9 in their personal capacities. Nor does she allege which officers or employees were involved in
 10 her allegations or how. While Schneider and Ford are individuals potentially subject to RICO
 11 liability, Plaintiff does not allege sufficient facts to establish but-for cause between their actions
 12 and her damages. Plaintiff alleges that Schneider and Ford arranged the murder of her husband
 13 and were involved in “fabricating” bench warrants for Plaintiff’s arrest for domestic battery,
 14 which could constitute predicate acts under 18 U.S.C. § 1961. *See* 18 U.S.C. § 1961(1)(A)
 15 (listing an act involving murder as a predicate act); *see also* 18 U.S.C. § 1961(1)(B) (listing 18 U.S.C.
 16 § 1510—obstruction of criminal investigations—and 18 U.S.C. § 1511—obstruction of state or
 17 local law enforcement—as predicate acts). But it is unclear if this activity was the but-for cause
 18 of Plaintiff losing her property at auction because Plaintiff’s timeline and certain of her facts are
 19 unclear. She alleges that Schneider and Ford caused bench warrants to be issued. But it is
 20 unclear when those warrants were issued and if she was arrested under those warrants. And
 21 Plaintiff has not alleged that her property was actually auctioned off or when that happened.
 22 Ultimately, Plaintiff has not alleged that the racketeering activity she describes was the but-for
 23 cause of her losing her property. The Court thus dismisses Plaintiff’s RICO claim without
 24 prejudice and with leave to amend.

25 2. Malicious prosecution.

26 In Nevada, the elements of a malicious-prosecution claim are: “(1) want of probable cause
 27 to initiate the prior criminal proceeding; (2) malice; (3) termination of the prior criminal
 28 proceedings [in favor of the accused]; and (4) damage.” *LaMantia v. Redisi*, 38 P.3d 877, 879

1 (Nev. 2002) (citation omitted); *see also Dutt v. Kremp*, 894 P.2d 354, 357 (Nev. 1995), *overruled*
 2 *on other grounds by LaMantia*, 38 P.3d 877. Plaintiff has not alleged sufficient facts to state a
 3 claim for malicious prosecution. She has not alleged that there were any criminal proceedings
 4 against her other than the unspecified fabricated bench warrants she references. And she has not
 5 alleged malice, that the subsequent criminal proceedings terminated in her favor, or damages
 6 related to the criminal proceedings. The Court thus dismisses Plaintiff's malicious prosecution
 7 claim without prejudice and with leave to amend.

8 3. Legal malpractice.

9 To prevail on a legal malpractice claim, a plaintiff must prove the following elements:
 10 (1) an attorney-client relationship; (2) a duty owed by the attorney to the client "to use such skill,
 11 prudence, and diligence as lawyers of ordinary skill and capacity possess in exercising and
 12 performing the tasks which they undertake"; (3) a breach of that duty; (4) "the breach being the
 13 proximate cause of the client's damages"; and (5) that the plaintiff suffered actual loss or damage
 14 as a result of the negligence. *Day v. Zubel*, 922 P.2d 536, 538 (Nev. 1996).

15 Plaintiff has not alleged a cognizable claim for legal malpractice. She alleges that she had
 16 an attorney-client relationship with Schnieder in regard to a family court case and settlement
 17 agreement between her and her husband in 2021. As a result of that relationship, Schneider owed
 18 her a duty to use skill, prudence, and diligence. Plaintiff alleges that Schneider breached that duty
 19 by hiring a private investigator who suggested that Plaintiff frame her husband for a DUI. When
 20 Plaintiff told the private investigator that she would not engage in that framing, Schneider
 21 withdrew his representation. Plaintiff asserts that a day later, a bench warrant was issued for her
 22 arrest on a fabricated misdemeanor charge, presumably connected to Schneider. However, other
 23 than the warrant, which she does not sufficiently connect to Schneider, Plaintiff does not allege
 24 that she suffered any loss or damage as a result of Schneider's actions. While she alleges that
 25 Schneider was later involved in murdering her husband and colluding with HPD, she does not
 26 allege that this was related to his representation of her such that it could form the basis of a legal
 27 malpractice claim. The Court thus denies Plaintiff's legal malpractice claim without prejudice
 28 and with leave to amend.

1 4. Fourth Amendment illegal search and seizure and unlawful arrest.

2 The Fourth Amendment guarantees a citizen's right to be free from "unreasonable
 3 searches and seizures." U.S. Const. Amend. IV. "[T]he ultimate touchstone of the Fourth
 4 Amendment is 'reasonableness,'" and thus, "[w]here a search is undertaken by law enforcement
 5 officials to discover evidence of criminal wrongdoing, ... reasonableness generally requires the
 6 obtaining of a judicial warrant." *Riley v. California*, 573 U.S. 373, 381-82 (2014) (second
 7 alteration in original) (internal quotation marks and citations omitted). "A claim for unlawful
 8 arrest is 'cognizable under § 1983 as a violation of the Fourth Amendment, provided the arrest
 9 was without probable cause or other justification.'" *Perez-Morciglio v. Las Vegas Metro. Police*
 10 *Dep't*, 820 F.Supp.2d 1111, 1120 (D. Nev. 2011) (quoting *Dubner v. City & Cnty. of S.F.*, 266
 11 F.3d 959, 964-65 (9th Cir. 2001)). "An arrest generally must be supported by probable cause."
 12 *Id.* (citing *Dubner*, 266 F.3d at 964-65). Probable cause exists if, at the moment of arrest,
 13 "under the totality of the circumstances known to the arresting officers (or within the knowledge
 14 of the other officers at the scene), a prudent person would believe the suspect had committed a
 15 crime." *Id* at 1121 (citing *Blankenhorn v. City of Orange*, 485 F.3d 463, 471-72 (9th Cir.2007)
 16 (quotation omitted)).

17 42 U.S.C. § 1983 creates a path for the private enforcement of substantive rights created
 18 by the Constitution and Federal statutes. *See Graham v. Connor*, 490 U.S. 386, 393-94 (1989).
 19 To state a claim for a Constitutional violation under 42 U.S.C. § 1983, a plaintiff must allege the
 20 violation of a right secured by the Constitution and the laws of the United States and must show
 21 that the alleged deprivation was committed by a person acting under the color of law. *West v.*
 22 *Atkins*, 487 U.S. 42, 48-49 (1988). However, municipal entities—as opposed to individual state
 23 actors—may not be held liable simply because they employ a person who allegedly violates the
 24 constitution. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978). Instead, a plaintiff
 25 seeking to impose liability on a municipality under § 1983 must identify a municipal policy or
 26 custom that caused the plaintiff's injury. *Id.*

27 Plaintiff has not alleged a cognizable claim for illegal search and seizure. Plaintiff alleges
 28 that the HPD searched her home beyond what was reasonable to investigate her husband's death

1 and that they did so without a warrant. Specifically, Plaintiff alleges that officers went through
2 her purses and boxes in various closets along with old checkbooks that would have taken officers
3 hours to find. Plaintiff also alleges that doors to the master bedroom, home office, and her son's
4 bedroom were forced open. However, Plaintiff has not alleged this claim against any specific
5 officers, but the HPD generally. And because HPD is a municipal entity, it cannot be liable under
6 § 1983 just because it employs officers who violated Plaintiff's constitutional rights. Instead,
7 Plaintiff must allege that HPD had a municipal policy or custom that caused her injury. Because
8 she does not, her illegal search and seizure claim fails.

9 Plaintiff has not alleged a cognizable claim for unlawful arrest because she does not allege
10 whether or when she was arrested. Plaintiff alleges that fabricated bench warrants were issued for
11 her arrest. But she does not state that she was arrested under the authority of those warrants or
12 allege when that happened. The Court thus dismisses Plaintiff's claims for illegal search and
13 seizure and unlawful arrest without prejudice and with leave to amend.

14

15 **IT IS THEREFORE ORDERED** that Plaintiff's application to proceed *in forma*
16 *pauperis* (ECF No. 1) is **granted**. Plaintiff shall not be required to pre-pay the filing fee.
17 Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of
18 any additional fees or costs or the giving of a security therefor. This order granting leave to
19 proceed *in forma pauperis* shall not extend to the issuance and/or service of subpoenas at
20 government expense.

21 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to file Plaintiff's
22 complaint (ECF No. 3) on the docket but shall not issue summons.

23 **IT IS FURTHER ORDERED** that Plaintiff's complaint is dismissed without prejudice
24 and with leave to amend.

25 **IT IS FURTHER ORDERED** that Plaintiff shall have until **April 11, 2024** to file an
26 amended complaint to the extent she believes she can correct the noted deficiencies. If Plaintiff
27 chooses to amend the complaint, Plaintiff is informed that the Court cannot refer to a prior
28 pleading (i.e., the original complaint) to make the amended complaint complete. This is because,

1 generally, an amended complaint supersedes the original complaint. Local Rule 15-1(a) requires
2 that an amended complaint be complete without reference to any prior pleading. Once a plaintiff
3 files an amended complaint, the original complaint no longer serves any function in the case.
4 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement
5 of each Defendant must be sufficiently alleged. **Failure to comply with this order may result**
6 **in the recommended dismissal of this case.**

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DATED: March 12, 2024

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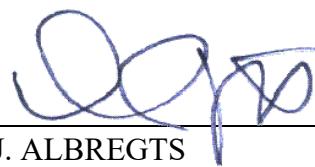
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DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE